IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7166 & 7167 of 2000

with

CRIMINAL MISC.APPLICATION No 7124 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DALPATSING SHERSING

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7166 of 2000
MR AP RAVAL for Petitioner
HL JANI, APP, for Respondent No. 1

2. Criminal Misc.ApplicationNo 7167 of 2000
MR AP RAVAL for Petitioner
MR HL JANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/12/2000

ORAL JUDGEMENT

Rule. Mr H.L. Jani, learned APP, waives service of Rule on behalf of the respondents in each of the matters.

2 As common questions of law and fact are involved in the above said three matters, all the matters are taken up for hearing together and are being disposed of by this common order.

3 The petitioner of Criminal Misc. Application No.7166 of 2000 has challenged the criminal prosecution initiated vide CR No.154 of 1998 registered at Shihori Police Station, District Banaskantha.

The allegation contained in the FIR suggests that Police Sub-Inspector of Shihori Police Station on receipt of the intelligence report that one person named Rathod Dalpatsing Shersing (present petitioner) is to bring Indian Made Foreign Liquor in a vehicle bearing registration No. GJ-8A-9245 from Abu Road, Rajasthan, and to go towards District Kutch, a road blockade was arranged and the vehicle was intercepted in which one person along with driver was found who are accused nos.1 and 2 - Chetanlal Muktaram Panchal and Ramlal Lakhaji Chaudhary. That on search of the vehicle Indian Made Foreign Liquor was found and as such crime was registered against said accused for the offences made punishable u/s 66(1)(b), 65(a), 81, 83, 116 (2) of the Bombay Prohibition Act, 1949 ("Act" for short).

The petitioner has challenged the said prosecution in the present petition on the ground that the FIR registered does not disclose any allegation involving the petitioner in the alleged offences therein and no material is produced by the prosecution to establish involvement of the petitioner and hence the petition.

4 The petitioner of Criminal Misc. Application No.7167 of 2000 has challenged the criminal prosecution initiated vide CR No.22 of 1997 registered at Gadh Police Station against one Nagarbhai Savabhai Bhatia.

The allegation contained in the FIR suggests that Police Inspector Panderiya on receipt of the intelligence

report that the petitioner is illegally dealing in supply of liquor and is bringing the liquor from Rajasthan and to supply the same to one Nagarbhai Savabhai Bhatia, raid was carried out at the place of said Nagarbhai Savabhai Bhatia and Indian Made Foreign Liquor was found and as such an offence was registered against him. The P.I. has stated in the FIR that the accused Nagarbhai Savabhai Bhatia made a statement before him that said liquor was supplied to him by the present petitioner and on the basis of the same the petitioner is made accused no.2 in the FIR for the offences made punishable u/s 66(1)(b), 65(a), 81, 83, 116 (2) of the Bombay Prohibition Act, 1949.

The petitioner has challenged the said prosecution in the present petition on the ground that the FIR registered does not disclose any allegation involving the petitioner and except a bare word of accomplice no material is produced by the prosecution to establish involvement of the petitioner and hence the petition.

5 The petitioner of Criminal Misc. Application No.7224 of 2000 has challenged the criminal prosecution initiated vide CR No.126 of 2000 registered at Palanpur City Police Station against one Moti Hema Bhil and one Savaji Dhupaji Majirana for the offence made punishable under Sections 65(1)(a)(e), 116 (2) and 81 of the Act on the allegation that accused are storing Indian Made Foreign Liquor without any pass or permit.

The allegation contained in the FIR suggests that Police Inspector Palanpur City Police Station during the patrolling duty on 20.3.2000 has received the information that the said accused Moti Hema Bhil has brought Indian Made Foreign Liquor to sell the same on the festival of Holi Dhuleti and as such on receipt of the said information a raid was carried out at the place of said Hema Moti Bhil and Indian Made Foreign Liquor was found and as such an offence was registered against him. The P.I. on enquiry from the accused received the information that one Savaji Dhupaji Majirana is abetting the accused Hema Moti Bhil to bring the liquor for sale during Holi festival and as such crime was registered against said two accused.

The petitioner has challenged the said prosecution in the present petition on the ground that the FIR registered does not disclose any allegation involving the petitioner nor does it provide anything from which an inference regarding the involvement of the

petitioner can be drawn.

6 Initially, vide earlier order dated 4.12.2000 urgent show-cause ntoice was issued and the learned APP was directed to collect the necessary information from the Investigation Officer. Today when the matter is called out, learned APP has stated that no information is received though the Investigation Officer remained present earlier. It would be pertinent to note that despite a sepcific instruction sent through the APP if the Investigation Officer has not produced anything on record from which the petitioner could be said to have been involved in the offences alleged against him in the C.R. registered and referred to in the above stated proceedings, it has to be held that the Investigation Officer has no information and in the absence of any cogent material showing involvement of the petitioner in the said offences issuance of declaration that the petitioner has been absconding cannot be said to be just or proper or continuation of prosectuion against the petitioner is required to be quashed and set aside.

7 On the basis of the foregoing discussion, above referred to all the three petitions are allowed. The respective criminal cases referred to in each of the petitions qua the present petitioner is quashed and set aside. Rule to that extent made absolute. No order as to costs.

(A.K.Trivedi J.)

(mohd)